IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR KENT COUNTY

NORMAN WHALEY,	:	
	:	C.A. No: K12C-11-047 RBY
Plaintiff,	:	
	:	
v.	:	
	:	
NATIONWIDE MUTUAL INSURANCE	:	
COMPANY, a foreign corporation,	:	
	:	
Defendant.	:	

Submitted: February 7, 2014 Decided: February 10, 2014

Upon Consideration of Defendant's Motion to Consolidate GRANTED

ORDER

Jeffrey J. Clark, Esquire, Schmittinger & Rodriguez, P.A., Dover, Delaware for Plaintiff.

Donald M. Ransom, Esquire, Casarino, Christman, Shalk, Ransom & Doss, P.A., Wilmington, Delaware for Defendant.

Young, J.

February 10, 2014

SUMMARY

Nationwide Mutual Insurance Company ("Defendant") moves to consolidate the case, *Norman Whaley v. Nationwide Mutual Insurance Company*, with two other cases before the Court: *Erma Baines v. Nationwide Mutual Insurance Company*, C.A. No. K12C-11-048 WLW and *Tanja Baines-Whaley v. Nationwide Mutual Insurance Company*, C.A. No. K12C-11-051 RBY. All three of these cases involve claims for Personal Injury Protection (PIP) benefits, claimed as a result of two motor vehicle accidents. The Court must decide whether there are common issues of law or fact in all three cases pursuant to Superior Court Civil Rule 42. This is a series of actions in which one accident is common to all three PIP claims and the same medical expert has provided the treatment, although a second accident does involve one Plaintiff. The interest of judicial efficiency in consolidating the cases outweighs the risk of prejudice to parties. Therefore, Defendant's Motion to Consolidate is **GRANTED**.

STANDARD OF REVIEW

Under Delaware Superior Court Civil Rule 42 (a), "when actions involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial of any or all matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." The Court has broad discretion to consolidate cases for trial "so that the business of the Court may be dispatched with expedition and economy while providing justice to the

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parties."¹The Court must weigh any savings of time, effort or cost against the possibility of undue prejudice or confusion of the issues.² Generally, consolidation is appropriate if the likelihood of jury confusion or undue prejudice does not outweigh judicial economy and efficiency.³

DISCUSSION

According to Defendant, all of the cases sought to be consolidated involve common questions of fact and law. In Norman Whaley's ("Plaintiff") Opposition to Defendant's Motion to Consolidate, Plaintiff claims that in the case of Norman Whaley and Erma Baines, the matter does involve the same accident on December 22, 2011 and the same insurer. However, Plaintiff Tanja Baines-Whaley was injured in two separate accidents. Therefore, Plaintiff contends that the consolidation would be unfairly prejudicial to the parties due to the comparing of separate parties' injuries. Plaintiff's argument is not convincing. The allegation involved in Plaintiff Tanja Baines-Whaley's suit deals with the indivisibility of the cause of her injuries, and whether they are reasonable, necessary, and related to a December 4, 2010 accident, the December 22, 2011 accident, or both. Even so, a jury is not likely to suffer confusion by simple multiplicity of claims or to be disconcerted by the fact that some evidence will be admissible against some

¹ Dove Demange, 2008 Del. Super. LEXIS 319, *3 (Del. Super. Aug. 29, 2008) (quoting Olson v. Motive Enters., 2003 Del. Super. LEXIS 260 (Del. Super. July 22, 2003)).

² Bartron v. Pettit, 2007 Del. Super. LEXIS 357, at *11 (Del. Super. Nov. 27, 2007) (Exhibit B).

³ Freibott v. Miller, 2009 Del. Super. LEXIS 250, at *3 (Del. Super. July 9, 2009) (Exhibit C).

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parties, but not others.4

There is little argument confronting the proposition that Judicial economy would well serve by a consolidation of these cases. Additionally, the consolidation could well aid the jury in considering the various claims, and lead to a more fair and accurate verdict.

CONCLUSION

For the foregoing reasons, Defendant's Motion to Consolidate is **GRANTED**.

IT IS SO ORDERED.

/s/ Robert B. Young	
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RBY/lmc

oc: Prothonotary

cc: Counsel

Hon. William L. Witham, Jr.

Opinion Distribution

File

⁴ Freibott v. Miller, 2009 Del. Super. LEXIS 250, at *8.